How to Conduct a Harassment Investigation
Introduction

Why should you worry about harassment complaints and lawsuits? For starters, the U.S. Equal Employment Opportunity Commission (EEOC) received 30,512 complaints of sexual harassment in 2011 alone.

Second, those cases yielded $100 million in penalties — independent of monetary awards from litigation. You can avoid many of these claims, lawsuits and costs by conducting thorough internal investigations as soon as complaints are received.

All complaints of harassment must be taken seriously. If managers and supervisors become aware of harassment — even without getting a formal complaint — instruct them to address the situation promptly. Your initial goal is to investigate rigorously while respecting both the complainant and the accused harasser.

As the employer, you should also advise managers and others responsible for handling harassment complaints not to allow their personal opinions to affect how they deal with a complaint.

This e-guide offers essential information on conducting a proper internal investigation. It has practical advice and sample forms to help you act appropriately and avoid the legal trouble associated with harassment claims. How your company handles the investigation and the steps you take against the offender are very important. Both have a very real impact on whether the complainant is satisfied with the company’s response, or files an external complaint or lawsuit.
Conducting a harassment investigation

All complaints of harassment must be taken seriously, and you as the employer should advise managers and others responsible for handling harassment complaints not to allow their personal opinions to affect how they deal with a complaint. To ensure prompt investigation, inform managers and supervisors to immediately report any complaints of harassment. Also, even if no one has complained of harassment but you nevertheless become aware of it, address the situation promptly.

Assessing the situation

The EEOC recommends that employers have mechanisms in place to conduct prompt, thorough and impartial investigations, so you should be prepared to begin an investigation (if one is necessary) as soon as you become aware of a harassment issue.

The particular facts of a situation will determine how much time the investigation will take. For example, more witnesses or multiple allegations will call for a more thorough investigation. At the very least, always interview the alleged harasser and anyone who witnessed or complained about the behavior.
How to choose an investigator

One of the critical decisions to make when beginning an investigation is choosing the investigator. In many cases, the person designated to receive complaints in your company's no-harassment policy should also be responsible for the investigation. Typically human resources personnel or upper-level managers with specific harassment training are responsible for conducting investigations.

Because the investigator must be objective, the alleged harasser should never act as the investigator. Likewise, the alleged harasser should not have supervisory authority over the investigator and should not have any direct or indirect control over the investigation. Similarly, the investigator should not be the complainant's immediate supervisor.

The investigator must be thorough in every aspect of the investigation. An internal witness may assist in the investigation by taking notes during interviews and helping to recap important information.

How to conduct interviews

General guidelines

Interviews are an important part of any harassment investigation, because this is where you get firsthand information from the accuser, alleged harasser and any witnesses, in their own words. It is during the interview that assessments can be made about truth and credibility.

Here are some general guidelines to follow during an interview:

- **Never promise absolute confidentiality.** Always explain to the person being interviewed that the company will protect the confidentiality of information "to the extent possible." Certain information must be revealed to the parties involved in the investigation, and information may be shared with others on a "need-to-know" basis.

- **Treat all complaints seriously and never suggest guilt.** Whatever your personal opinions are regarding the allegations, keep them to yourself and don't allow them to interfere with the investigation. Everyone has different values and standards. You must treat all complaints seriously, even if you think the accuser is overreacting. By the same token, even if you think the alleged harasser is responsible, do not assume guilt. Never take sides during an interview.

- **Ask open-ended questions and listen to the responses.** Allow the person being interviewed to talk freely. Remain neutral and ask questions that give the interviewee an opportunity to speak candidly. If someone is comfortable telling a story without being prompted, let him or her speak freely.

- **Stick to the facts.** Keep things in proper perspective and don't get sidetracked during an interview by a person's emotions, beliefs or speculation. Firsthand knowledge is always the most reliable.
■ **Remove distractions.** Try to conduct each interview when you will not be distracted by time constraints, meetings, phone calls or other work. Giving your undivided attention during an interview will allow open discussion and will result in more reliable information. It also will demonstrate to the accuser that the company takes the complaint seriously and is responding properly.

■ **Emphasize privacy.** Remind each party being interviewed that the investigation shouldn’t be discussed with other employees or other parties to the investigation.

■ **Document everything.** All meetings, discussions and interviews should be documented with detailed notes. You may want to involve a “silent” witness or assistant to take notes recording the entire interview. Otherwise, be sure the note-taking does not interfere with the interview. Before the interview ends, the interviewer or notetaker should review his or her notes and clarify any gaps or misunderstandings.

**How to interview the parties**

Interview the complainant first, then the alleged harasser, and then third parties who may have relevant information.

**Interviewing the complainant**

When interviewing the accuser, attempt to gather as much detail as possible about every incident. To obtain honest and complete answers, it is imperative that the complainant feels comfortable. Allow the accuser to take breaks if needed, and do not rush through the interview. Some questions that should be asked include:

■ Who committed the alleged harassment?
■ What occurred or what was said?
■ When did it occur? Is it still ongoing?
■ Where did it occur?
■ How often did it occur?
■ How did it affect you? Has your job been affected?
■ How did you react?
■ Are there other persons with relevant information? Was anyone present when the alleged harassment occurred? Did you tell anyone about it?
■ Did the person who harassed you harass anyone else?
■ Is there any evidence or documentation of the incident?
■ How would you like to resolve the situation?
■ Did you take notes or record any of the details as they occurred? (If so, ask whether he or she will share copies. This will become critical evidence in case a legal dispute arises.)
■ Do you have any other relevant information?
After the interview, explain to the complainant that the complaint will be investigated thoroughly and kept confidential to the extent possible under the circumstances. Make sure the complainant understands that the company prohibits retaliation.

Remind the complainant to report any incidents of perceived retaliation. Also give the complainant the option to notify you if he or she remembers any pertinent information that was omitted in the initial interview, or is the subject of any further harassment.

**Interviewing the alleged harasser**

When meeting with the alleged harasser, begin by explaining the purpose of the meeting. The individual must understand that there have been allegations that he or she has engaged in inappropriate behavior, and that the purpose of the interview is to gather information about the nature of the alleged conduct.

It should be made very clear that no conclusions have been drawn, and that multiple parties will be interviewed before any decisions will be made. Encourage the alleged harasser to be open and honest, and to cooperate fully during the interview.

Review the company’s no-harassment policy with the alleged harasser and then ask whether he or she knows anything about the allegations. If not, ask the alleged harasser whether he or she may have done or said anything to offend the complainant.

Find out about the relationship between the complainant and the alleged harasser. Questions regarding their working relationship, any past confrontations, socialization outside of work and chain of command should be a part of the interview. Discuss the specific allegations and ask the alleged harasser to respond to each individually.

Other questions to ask the alleged harasser include but are not limited to:

- What is your response to the allegations?
- Would the complainant have a reason to lie about the allegations?
- Can anyone else provide relevant information? Ask for their names and other helpful identifying information if they are not employees.
- Is there any physical evidence or documentation regarding the alleged incident(s)?
- Can you offer any other helpful or relevant information?

Assure the alleged harasser that the company still is investigating the complaint, and will keep him or her updated on the results of the investigation. Also, remind the alleged harasser that retaliation against the complainant or anyone else participating in the investigation is strictly prohibited and may result in discipline up to termination.
Interviewing third-party witnesses

Interview witnesses provided by the complainant first, then witnesses listed by both the complainant and the alleged harasser (if any), and finally, any other people who might have information relevant to the investigation.

Inform the witness that allegations have been made that the company’s no-harassment policy has been violated. The witness should be encouraged to speak openly and honestly, and reminded that dishonesty can have consequences separate from the allegations being investigated.

Review the company’s no-harassment policy with the witness and explain the alleged harassment in question (e.g., race, color, sex, religion, national origin, age, disability or another protected status). Ask the witness whether he or she has observed any conduct that could be described as that kind of harassment.

After asking the initial, open-ended questions, emphasize the specifics. Tell the witness the name of the alleged harasser and ask whether he or she is aware of anything the accused harasser might have done or said to offend someone.

Next, inform the witness of the specific allegations, asking whether he or she knows of anything the alleged harasser did or said to offend the complainant. Ask the witness about the relationship between the accuser and the alleged harasser.

Discuss each allegation with the witness. It is important that the questions are framed so as not to accuse the alleged harasser of engaging in the conduct. The witness should not get an impression that you are taking sides.

Some questions to ask third-party witnesses include:

- What did you see or hear? When did this occur?
- What is the alleged harasser’s behavior toward the complainant and toward others in the workplace?
- What did the complainant tell you? When did this occur?
- Do you know of any other relevant information?
- Are there other persons who have relevant information?

Last, inform the witnesses that this is a private matter not to be discussed with peers or coworkers.
Documenting the investigation

Always document every aspect of an internal investigation. Important to note are:

- The names of employees interviewed
- Information provided in each interview
- Credibility assessments
- Documents reviewed
- The dates of each interview or activity

Any action taken in response to the allegations also should be documented.

Obtaining written statements

It’s a good idea to obtain affidavits from employees who provide information during your internal investigation. This will “lock in” their version of the facts, and can be used to counteract contradictory evidence later in the course of the investigation or in litigation.

Written statements are particularly useful:

- When the allegations are highly contested. Signed statements can help support or rebut key allegations.
- To justify your response to an allegation. When discipline (e.g., termination) has been imposed, written proof of the alleged harasser’s admission of wrongdoing or of a witness’s firsthand account of a key incident will help justify your actions.
- When a witness is unavailable or uncooperative at a later date (e.g., someone who is relocating or who may be terminated). If the internal complaint turns into a lawsuit, written documentation of an individual’s testimony may prove helpful if he or she is not available or not willing to provide testimony later.

ComplyRight Tip

Retain all documentation in a confidential file, separate from employee personnel files, except for notices of disciplinary action.
Legal Lingo: “Discoverable”

This term describes information in your report that, if a lawsuit arises, you may have to share with the court and opposing parties. Keep this in mind when preparing the report. Strive for a tone that is professional and objective, and avoid making personal attacks or subjective comments.

Investigation report

When the investigation is complete, organize all your findings and information into a comprehensive report. The report will provide a summary for decisionmakers to consult when deciding how to respond to the allegations, and will most likely be discoverable in a subsequent legal proceeding.

Include in the report:

- A chronology of the actions taken in the investigation
- A summary of the complainant’s allegations
- The alleged harasser’s response
- Relevant witness testimony that corroborates or contradicts the allegations
- The investigator’s assessment of the parties’ credibility
- The investigator’s factual conclusions
- Relevant evidence considered
- Recommendations for corrective action

Assessing credibility

If the interview process results in conflicting versions of events, you then will have to weigh each party’s credibility.

Some factors to consider are:

- **Inherent plausibility** – Is the testimony believable?
- **Demeanor** – Did the person seem to be telling the truth?
- **Motive** – Did the person have a reason to lie?
- **Corroboration** – Does any witness testimony or physical evidence support the party’s testimony?
- **Personal record** – Does the alleged harasser have a history of similar behavior?

Keep in mind that none of these factors alone can establish or destroy credibility — consider them together in light of the circumstances.
**Reaching a determination**

Once the investigation is complete, determine whether a violation of your company’s no-harassment policy occurred, and inform the parties of your determination. If the evidence is inconclusive, you still should take preventive measures, such as training and monitoring.

If it is decided that harassment has occurred in violation of company policy, communicate that you will take immediate corrective action, and inform the parties what that will be. Remedial measures should stop the harassment from occurring or recurring, and should correct its effects on the victim. Disciplinary measures should be in line with the seriousness of the offense, from warning or counseling up to and including termination.

---

**Corrective Action Report**

Employee name ___________________________________________ Date of this report ____________/______/______

This Report is being issued to you as a result of an internal investigation concerning allegations of harassment or related inappropriate conduct.

1. The nature of allegations against you include ________________________________

2. As a result of a thorough investigation, the Company has concluded (check one):
   - [ ] That you engaged in the following inappropriate conduct:
   - [ ] That the allegations against you cannot be substantiated and/or the investigation is inconclusive as to your participation in any wrongdoing.

3. Corrective action imposed (check all that apply):
   - [ ] Reaffirmation of Employee’s No-Harassment Policy and renewed pledge of compliance
   - [ ] On-going monitoring of Employee’s conduct to ensure compliance
   - [ ] Knowing that future occurrences may result in discipline up to and including termination
   - [ ] Training (Specify)
   - [ ] Evaluation (Specify)
   - [ ] Suspension (Specify)
   - [ ] Transfer/Reassignment (Specify)
   - [ ] Termination
   - [ ] Other (Specify)

4. Previously addressed incidents of related misconduct

<table>
<thead>
<tr>
<th>Date</th>
<th>Type of Misconduct</th>
<th>Action Taken</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**NOTE TO EMPLOYEE:** You are strictly prohibited from retaliating in any manner against any employee who has made a report of harassment or participated in an investigation related to alleged harassment. Violation of this directive may result in disciplinary action up to and including immediate termination.

By signing below, the Employee acknowledges that he/she has reviewed this Report in its entirety, and that he/she has read and understood the Company’s policy against harassment and retaliation.

Employee’s signature ___________________________________________ Date ____________/______/______

Employee’s contacts ___________________________________________

Report issued by [sign and print name] ____________________________
Remedial measures should stop the harassment and prevent it from recurring. Some examples include:

- Verbal or written warning or reprimand
- Transfer or reassignment
- Demotion
- Reduction of wages
- Suspension
- Discharge
- Training or counseling
- Monitoring

Measures designed to correct the effects of harassment include but are not limited to:

- Restoration of leave taken because of harassment
- Expungement of negative evaluation in personnel file arising from the harassment
- Reinstatement
- Apology
- Monitoring the alleged victim
- Compensation for losses
- Correction of any other harm

**Communicating the results**

Communicate the results of an investigation to the complainant and the alleged harasser separately. You should explain the general results of the investigation and the remedial actions, if any, that will be taken.

**Complainant**

In the interest of privacy, when communicating the results of an investigation to the victim, it is not necessary to reveal the specific disciplinary action that will be given to the accused harasser.

Give the accuser a copy of the company’s no-harassment policy and explain that, if future incidents occur, they should be reported immediately so the company can take appropriate action. Further, explain that the company will not tolerate retaliation, and that any incidents of retaliation should be reported.

**Alleged harasser**

Tell the alleged harasser the results of the investigation and the remedial or disciplinary action the company will take, if any, against him or her. Confidently describe and document in detail the terms of any discipline.

If your company offers the right to appeal the results of an investigation, explain this to the alleged harasser. (This may be required for certain public-sector workers and employees belonging to a union.) Give him or her a copy of the company’s no-harassment policy and discuss what will happen if the policy is violated in the future. Explain that retaliation against the victim, or anyone else who participated in the investigation, is strictly prohibited and can lead to discipline up to termination.
How to avoid retaliation claims

By law, an employer may not retaliate against an employee for filing a complaint or charge of harassment (internally or with a government agency), or for testifying, assisting, participating or cooperating in an investigation, proceeding or hearing in connection with a claim of harassment or discrimination.

Events that can qualify as retaliatory acts include but are not limited to:

- Refusal to hire or rehire
- Demotion
- Denial of promotion
- Transfer to a less desirable position
- Negative job evaluation or performance review
- Overscrutinizing performance or conduct

Even if an employee’s claim has no merit, the employee still can sue the employer if he or she is subjected to retaliation for making the complaint.
Moving an employee to a less desirable office space
Harassment
Unwarranted disciplinary action, counseling or reprimand
Subjecting an employee to stricter rules or standards than those applied to other employees
Excluding an employee from meetings or career development opportunities
Any other negative personnel action or adverse treatment affecting an employee's working conditions

After you receive a harassment complaint, make sure the complainant's managers understand what retaliation is and how to avoid it. Employers can be held liable for retaliation even if the underlying harassment claim has no merit.

ComplyRight Tip
It is illegal to retaliate against someone after his or her employment ends. You cannot give a former employee a negative job reference or withhold giving a job reference based upon an employee’s participation in or cooperation with activity related to a charge of harassment. Further, you may not inform a prospective employer that an employee engaged in protected activity while employed with your company.
Follow up with the complainant

After a harassment complaint and/or investigation has been resolved, it is important to follow up periodically with the accuser to make sure he or she has not been subjected to continuing harassment or any form of retaliation. A good general rule is to follow up at least once a month for three months after the close of an investigation.

During these meetings, confirm that the harassing behavior has stopped and that the complainant has not been the victim of any form of retaliation. Document the results of every meeting. If the complainant reports any incidents of harassment or retaliation, respond immediately by investigating the matter and ensuring that the harassing behavior will stop.

Maintain confidential records

Throughout the investigation, you should maintain records of notes, documents, interviews, and other important items relating to the investigation in a confidential investigation file separate from personnel files. Any disciplinary action taken should be documented in an employee's personnel file. Having these files stored and organized properly will come in handy later if the complainant or alleged harasser files a legal claim.

---

### Follow-up Information Sheet

**Complainant's name**: __________________________________________

**Subject of complaint**: _________________________________________

**Date complaint received:** __________ **Date investigation concluded:** __________

1. **Date of FIRST follow-up meeting** __________
   - Did complainant report any subsequent acts of inappropriate conduct?
     - **No**  □ **Yes**  □
     - If “yes,” summarize the information provided and the Company's intended course of action
       - ____________________________________________________________
       - ____________________________________________________________

   - Did complainant report any retaliatory conduct?
     - **No**  □ **Yes**  □
     - If “yes,” summarize the information provided and the Company's intended course of action
       - ____________________________________________________________
       - ____________________________________________________________

2. **Date of SECOND follow-up meeting** __________
   - Did complainant report any subsequent acts of inappropriate conduct?
     - **No**  □ **Yes**  □
     - If “yes,” summarize the information provided and the Company's intended course of action
       - ____________________________________________________________
       - ____________________________________________________________

   - Did complainant report any retaliatory conduct?
     - **No**  □ **Yes**  □
     - If “yes,” summarize the information provided and the Company's intended course of action
       - ____________________________________________________________
       - ____________________________________________________________

**Other comments**: ______________________________________________

**Name/title of supervisor conducting follow-up**: _______________________

**Supervisor's signature**: __________________________________________

---

Follow-up with the complainant

After a harassment complaint and/or investigation has been resolved, it is important to follow up periodically with the accuser to make sure he or she has not been subjected to continuing harassment or any form of retaliation. A good general rule is to follow up at least once a month for three months after the close of an investigation.

During these meetings, confirm that the harassing behavior has stopped and that the complainant has not been the victim of any form of retaliation. Document the results of every meeting. If the complainant reports any incidents of harassment or retaliation, respond immediately by investigating the matter and ensuring that the harassing behavior will stop.

Maintain confidential records

Throughout the investigation, you should maintain records of notes, documents, interviews, and other important items relating to the investigation in a confidential investigation file separate from personnel files. Any disciplinary action taken should be documented in an employee's personnel file. Having these files stored and organized properly will come in handy later if the complainant or alleged harasser files a legal claim.
Include complainant in company events

Be mindful of actions you take toward an employee who has made a harassment complaint. Things you do may be interpreted as retaliatory under certain circumstances. For example, changing an employee’s schedule may not matter to most workers, but it could have a huge impact on workers needing to arrange child care. Make sure to include the complainant and other employees who participated in the harassment investigation in any important events, such as meetings or training sessions.

Transfer, discipline and termination

Just because an employee has filed a complaint of harassment doesn’t mean he or she is immune to discipline. An act such as transfer, demotion, discipline or termination may appear to be retaliatory in the aftermath of a harassment investigation, but you should not be afraid to take corrective action against an employee, if necessary, to enforce workplace rules or standards.

Keep in mind that you may be challenged, and that you should have sufficient documentation and factual support for your actions. Make sure you are not overly scrutinizing the employee’s performance, and that your rules and standards are applied consistently. Most important, any action taken against someone who has filed a complaint must be based on legitimate business reasons (e.g., performance or rule violations) — and may not be related whatsoever to his or her complaint.

Case Study

A female forklift operator of a railway company was the only woman in her department. She made an internal complaint against her immediate supervisor for sexual harassment. He was disciplined, but she was reassigned from forklift duty to standard track laborer tasks (a less desirable position). She filed a complaint with the EEOC, claiming retaliation. She was subsequently suspended without pay for insubordination.

When the company later realized it had made a mistake, it reinstated her and awarded her 37 days’ back pay. She filed another EEOC charge over the suspension. The employee then filed a case in federal court against her employer for retaliation.

In deciding the case, the U.S. Supreme Court held that the anti-retaliation provision of Title VII covers employer actions that are materially adverse to a reasonable employee or applicant. The court also found that the actions prohibited by anti-retaliation law are not limited to those affecting employment terms and conditions.
Key Points

✓ The EEOC recommends that employers have procedures for conducting prompt, thorough and impartial investigations. You should be prepared to conduct investigations immediately, when necessary.

✓ When conducting an internal investigation, choose an investigator who has been trained to handle harassment complaints, typically a manager or human resources professional.

✓ Treat all complaints seriously — never minimize a complaint or assume guilt.

✓ Investigators must be objective, detailed and thorough in their investigations.

✓ Never promise absolute confidentiality in an investigation or interview, but only share information with people on a “need to know” basis.

✓ Document the investigation, including meetings, discussions, interviews and credibility assessments.

✓ Consider obtaining written affidavits from persons interviewed.

✓ Prepare a thorough investigation report summarizing your findings.

Continued …
When weighing a party’s credibility, consider the following factors: inherent plausibility, demeanor, motive, corroboration and personal record.

After completing the investigation, communicate your determination to the parties separately.

Be aware of the potential for retaliation claims. Communicate to the parties that retaliation is prohibited.

To help prevent a retaliation claim, follow up with the accuser after the conclusion of the investigation; keep records confidential, and include the complainant and other participants in company events.